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PHOTOGRAPHER
1015, STREET, NEW YORK

FISHER HEARING

(Continued from Page 1)

had obtained the date of the railroad accident in which the four Japanese children were killed. The accident, he said, occurred July 8, 1910, a year before the railroad statute, discussed yesterday, went into effect. At this point Attorney Ashford stated that he had misunderstood his informant when he obtained his first information on this matter. He had learned, however, that the law, in a manner, was a result of that accident, and did not precede it.

The Governor took up his statement again, beginning with the discussion of land laws, and taking up specifically the 1,000-acre clause. He stated the law is a federal one, and prosecution for its violation rests with the United States District Attorney. He did not know whether that official's attention had ever been called to infringements.

On a question by Mr. Fisher, the Governor said he thought the United States District Attorney drafted the co-partnership corporation statute of the Territory. He did not know what business interests were behind the movement that resulted in its passage, he said in answer to a question by Fisher. Attorney Ashford said it was generally understood the Baldwin interests on Maui had been behind it. The Governor then took up the question of the land purchased by W. W. Goodale's corporation, which Mr. Wheeler, in a letter read yesterday, said had been sold by the Territory for \$10 an acre. Gov. Frear said he had looked up the records and found that \$30 an acre had been paid, as Goodale had testified.

Discussing the proposed Hilo wharf and the removal of the Armory, the Governor admitted there had been some feeling in that city against the removal of the Armory, but thought that had been largely dissipated since.

Fisher stated that the point made in this connection by Kuhio in his formal charges had therefore been sustained.

Regarding the public lands at Kohala, Gov. Frear went into the details of the application for homesteads. The complaint had been that no answer to the applications had been received from the Land Commissioner.

Lack of Publicity

In this connection the Secretary asked Gov. Frear to explain why so many cases of this kind seem to have occurred. He said he had encountered such complaints a number of times, from individuals and from groups. Gov. Frear said information should be furnished prospective homesteaders, but did not think complaints had occurred in more than three or four instances.

"My impression is that it has occurred a great deal more than three or four times," replied Fisher. The Governor explained in detail the routine of opening public lands, and the manner in which the people are notified.

Asked by Ashford why the homestead of A. V. Gear, at Waianae, has been withheld from him for months, after he had purchased it at auction, Governor Frear said it was due to litigation over the title. Attorney General Landay confirmed this, and told of the long process of litigation through which it has gone.

The document showing the agreement reached by the Thompson Settlement Association was called for by the Secretary, following a discussion of this agreement and the letter of Mr. Hewitt, of the Association.

Governor Frear discussed the situation respecting the complaints on the Kaunamano homesteads. He said he had decided to give the homesteaders a chance to make good on these, and those who did not wish to remain on them now, to transfer them to others, thus enabling them to get a return for the investments they have made improving the lands. He said he was willing to stretch the law as far as possible to enable them to

make good and keep their land.

Ashford, Fisher and Frear mutually agreed that the tendency of the planters to coerce the homesteaders into selling their homesteads to the larger interests is undoubtedly present in the Territory, also that it has not been found to have any foundation in fact, in influence with the government sufficient to injure the small growers.

Water Licenses Up

Secretary Fisher took up in some detail the question of leases and licenses, declaring that he was at a loss to understand the public advantages of the water licensing system when a lease, if the agreements were acceptable, would do the work. He also seemed curious as to why the land board is so restricted in its powers and its jurisdiction. Frear pointed out that the board is unpaid, and often hard for the members to get together, that they could hardly attend to all details of the land law and water rights administration.

Fisher asked: "If such is the case, why not abolish the land board, particularly when often even more important matters of water license must be submitted to the Governor instead of the board. Fisher intimated very strongly that the water licenses should be passed upon by the board."

Several of the specific complaints made by the delegate were passed over by the Governor. Mr. Fisher and Mr. Ashford, as it appeared that all parties were satisfied that the facts have already been made clear, either at previous hearings or during the trip of Mr. Fisher around the island. Other allegations in the complaint were referred to only briefly, the Governor explaining his position whenever Fisher or Ashford asked questions.

Referring to the Moaula lands at Puhia plantation, Secretary Fisher again commented upon the point that the government ought to give all the publicity possible to intended homestead openings and wanted to find out the people who wanted the Moaula lands told specifically that they could get Wood Valley lands. Frear said he could not say until he had consulted the land records.

"The general rule seems to be largely due to the delay in getting surveys," said Mr. Fisher in speaking a little later of the time elapsing before homesteads are actually opened. At this point Fisher asked Frear for a practical suggestion for improving the speed at which surveys are made, saying there seemed much delay in getting the surveys made. Governor Frear pointed out the physical and other difficulties that made surveys very slow. He said the physical difficulties can not be overcome, but that now that the great mass of applications filed just after the organic act was amended are being cleared away, the surveyors will not be so swamped as they have been.

Union Bishop Street

After some discussion of various matters of detail in the various charges and complaints, Governor Frear turned to the matter of the immigrant agent acts passed by the last Legislature, but just at this point Secretary Fisher asked William Wolters about the proposed condemnation of Bishop street extension and the closing of Union street. Wolters was called to the chair and declared that it was not until after the Brewer estate plans for its new building were matured that any attention was paid to the closing of Union and the opening of Bishop street. Wolters declared that his point is that the closing of Union street is against public interest and in favor of the Brewer estate. He thought the land commissioner and the Governor had acted very wisely in the matter.

Fisher, Frear for an explanation, and Frear said that business interest and public opinion alike were in favor of the plan of closing Union and opening Bishop street.

Secretary Fisher finally seemed to lose patience with Mr. Wolters' objection to the Governor's action, saying he could not see just what Wolters' point was, and that it was hardly fair to the "government of Honolulu" should be run according to his ideas.

At this point W. W. Thayer, Wolters' attorney, came into the discussion about the result was a lively debate over the whole Bishop-Union street improvement resulted. The debate continued considerable fun in the Senate chamber. Mr. Wolters, however, raining serious and insisting that the Governor has been acting in the interests of the Brewer estate. Secretary Fisher said that he could not pass on the merits of the fight very well, so far as the proper street widths be concerned and that he could only see how a hearing before his would straighten out the trouble. Amid more merriment than any other hearing has brought out, the entire controversy was ventilated with the final comment from Fisher that it seemed to be a misunderstanding all around. Marston Campbell was called on to say whether he did or did not tell Wolters he would not take up a relocation of Union street during Wolters' absence in Europe, and Campbell said: "Mr. Wolters is laboring under a false impression. I never made any such statement."

"This," said Fisher with a chuckle, "presenting those beautiful issues of fact and law that we can hardly go further with the discussion," and the hearing adjourned with a good deal of laughter.

FREAR STATEMENT TODAY

Governor Frear continued his statement yesterday as follows:

Sec. 1. Fisher: Well, Governor, I think you ought to go on with your statement where you left off yesterday. Olson: Secretary, I would like to file, in face of the original, a copy of this deed from the Territory to the Hilo Railroad Company, of land for

terminal purposes. (Hands Secretary Fisher copy of deed.)

Fisher: That is all right, Mr. Ashford, you can do that.

Olson: There is a provision in this deed, stating that the Territory can cancel the deed, if the company should permanently discontinue the rights-of-way on lands.

Fisher: I find here the proviso to which I suppose you refer. Is that the proviso?

Olson: That is the proviso.

Fisher: What authority is there in the law for enforcing this provision?

Olson: Well I don't know whether there is any express provision on that or not; but it is intended to mean the business of the Railroad Company as a railroad company.

Fisher: Now the proviso also says that this property shall revert to the Territory in case the railroad shall permanently discontinue such rights of way on lands. How would that be determined do you think?

Olson: Well I think there might be some considerable difficulty possibly in determining the discontinuance under that language.

Fisher: What do you think of that, Governor?

Olson: I think it could be determined by the Court.

Fisher: Well, of course, this is land which is set aside on the theory that you are going to take care of their somewhat remote future needs and it will be a long while before you could prove permanent discontinuance under those terms, would it not. Is there no authority in the law which provides for a reservation of that character?

Governor: I don't know of any provision. But the ground is for specific purposes. There is another provision also in the deed reserving the right to the Territory to put roads through this tract and any other public utilities of the public need. This is set in the paragraph preceding the paragraph just read.

Fisher: Yes. The language is "excepting and reserving, however, all rights-of-way for all public roads, pipe lines, telegraph and telephone wires and for other public and quasi-public purposes, which the Superintendent of Public Works, or his successor in authority, in and concerning, etc., etc."

Well, that is a pretty good reservation. It is better language than the other one.

Olson: The date of the injury to the Japanese children, referred to yesterday, was July 8, 1910, which occurred at the Wahiawa Trestle. I don't believe Mr. Dillingham is here this morning, although he said he would be. But that is the right date, as that is the only case of similar character that has happened.

Fisher: We will assume that that is the correct date.

Ashford: I believe that is approximately correct, Mr. Secretary. I also find in consulting with the Attorney that the law, or act, was passed as a result of the accident.

Fisher: Now is there anything further on the railroad question that has not been covered?

Governor: I might refer to the preference right granted to Senator Brown, to which reference was made at Hilo. It was claimed that I showed discrimination in favor of Senator Brown.

Fisher: Yes, or rather a willingness to grant such preferential right, except where it interfered with the railroad plans.

Governor: Yes, that was it. I stated there that it was a two-fold proposition—partly a matter of preferential right and partly a matter of exchange. But it was solely a preferential right matter. The matter of exchange was brought up several years before that, but the Territory had never made the exchange because it felt that it might need the land for public purposes at some time. The map shows (here hands map to Secretary) the location as around Reeds Bay. The other applicants for preference rights were along the shore of Reeds Bay on both sides. Their applications were refused until it could be determined whether the coast on which they were situated would be required for public purposes. Senator Brown's lot, however, was inland. Reeds Bay comes up to within about 400 feet of the nearest portion of Senator Brown's lot. The roadway about 200 feet in width, including the railroad right of way and wagon roads, and this roadway was to be about 200 feet inland from Senator Brown's lot. There is, as you will see on the map, a road between Senator Brown's lot and the Bay. Senator Brown's lots in no way interfered with the roadway.

Ashford: Might I ask the Governor a question at this time? Does the statute allow discontinuance on the part of the Executive in granting preference rights in Reeds Bay or similar waters?

Governor: The statute does not make it obligatory on the Executive to grant any one a preferential right; it is entirely within the discretion of the Executive. The provision in the Organic Act is a blanket provision, and for that reason it would be unwise to give persons the absolute right.

Fisher: Then the act confers authority, but does not direct, is that it?

Governor: Yes. Certain applications were made for the lands required for the College of Hawaii—required for a public purpose. They were refused, for it would be absurd to grant them rights and then have to take the rights away by condemnation proceedings.

Fisher: That is enough along that line. You may take up your statement where you left off yesterday morning.

Governor: There is only one other matter which was suggested yesterday, and that was in regard to the 1000-acre clause. It was asked yesterday whether the Territory had brought any action to test this clause. The statute is a Federal statute and the penalty clause is worded thus: (Quotes from statute)—and this makes it the business of the U. S. District Attorney to bring action.

Fisher: Who drafted the statute, do you know?

Governor: Well, I heard at the time of its purposes, and to sell the Armory

(that the U. S. District Attorney drafted the statute—that he was employed to do so.

Fisher: By whom was he employed? Governor: By business interests in town.

Fisher: Well, who would be the business interests who would want co-partnership enterprises in relation to lands of this character?

Governor: Probably those interested in plantations. Of course, this is only hearsay.

Fisher: Well, was it a planters' association committee or a committee of a business men's organization, or who was it?

Governor: I don't know whether it was an organization or individual corporations.

Fisher: Do you know who introduced the bill into the Legislature?

Governor: No, I do not; but I could find out by looking at the House Journal.

Ashford: My impression is that Mr. Thurston will know all about that, as it is generally known that Mr. Thurston was at that time, together with Mr. H. P. Baldwin, interested in a large area of land on Maui, ultimately involved.

Fisher: Now, Governor, will you have the records examined by Mr. Courtenay or some one, so I may know who introduced that bill in either or both Houses.

Governor: I will do so.

Olson: It was introduced either in the 1903 or 1905 session.

Fisher: I would like to see the statute, too, Mr. Hemenway, have you it there?

Mr. Hemenway: No, I haven't it here. (Goes out to get a copy of the statute.)

Governor: I might refer briefly to those lands at Waialua to which Mr. Goodale testified. Did you see the map yesterday? (Shows the map). Some 60 years ago the lands were laid out on each side of this deep gulch. The survey went to the edge of the gulch, leaving these precipitous sides of the gulch as government remnants. The plantation applied for these and at first the surveyor recommended that we do not take the matter up because the costs of the survey would perhaps equal the value of the land, and accordingly we provided that the applicant should have the survey made at his own expense in addition to paying the price of the land. An application was also made for this land in several large tracts. I state that we would not put it up that way, but would divide it up into lots so as to give others an opportunity to bid for them if they wished, and this was done. The gulch along here is about 500 feet deep and has a slope of perhaps about 45°.

Fisher: What was the price that was paid for the land; have you looked up the records since yesterday?

Governor: I have. The plantation offered \$250 an acre for what was classed as waste land; and Mr. Goodale says \$1250 was offered for what was classed as cane land. I think that was correct. Then the government raised the price of cane land to \$30.00 an acre; and after that had been decided orally the different companies put in special applications, that is, individual applications, for each lot. Here is a sample of one application. (Reads from application) "For 1.60 acres of cane land at \$30 an acre, or \$48.00. For the 48.40 acres of waste land, at \$25.00 an acre, \$121.90, making a total of 50 acres, or \$169.00, and giving the full description. I might say that the survey made by the plantation was then submitted to the Territorial Surveyor, who checked it over and made various corrections, and returned it to the plantation for a further survey."

Fisher: Did the Territorial Surveyor go on the land, but he checked over the surveys already in his office.

Fisher: I don't think we need any further information on that point. But I would like to know whether Mr. Wheeler was in error as to the \$10.00 or not.

Governor: These applications were written by Mr. Wheeler as shown by his initials "C. W." on the applications. Mr. Wheeler was then Mr. Goodale's stenographer.

Fisher: (Looks at statute which is handed him by Hemenway): This statute appears to have been passed in 1903.

Olson: That is correct.

Fisher: The stenographer will please note the following in his notes: Section 2631, and also the following section (Section 2632) of the Revised Laws. Will you just see that they are copied into your records?

Governor: I have advocated in my administration, and have established, a marketing bureau, demonstration farm, homestead centers, increase in applications for homestead roads.

Fisher: Will Mr. Starrett be here?

Governor: He will be here on Wednesday.

Fisher: You can now take up specific matters and go through them.

Governor: There are two other railroad matters which have been mentioned. One was in regard to the wharf that the Territory is constructing in Kihio Bay. I do not know whether any further explanation is needed on that point. I had nothing to do with that in any way. I thought it was a matter for the Board of Harbor Commissioners, and after several public hearings on the matter, a settlement was finally arrived at which seemed to be satisfactory to all concerned.

Fisher: I don't think it will be necessary to go into that any further.

Ashford: "There were various changes in the plans and specifications made subsequent to the filing of the charges by the Delegate."

Governor: About the Armory site matter. Are there any other explanations required in that connection?

Ashford: I have not heard that explained at all.

Governor: The Territory then determined to kill two birds with one stone by moving the Armory to what appeared to be a better site for armory purposes, and to sell the Armory

FISHER HAS NOT ENDED HIS HEARINGS

Secretary Fisher will conduct another hearing tomorrow morning, beginning at the usual hour. Whether it will be the final one, he does not know. His future plans depend entirely upon the wishes of Secretary of State Knox, he says. A trip by boat to Pearl Harbor is in contemplation for tomorrow afternoon, and the post dinner, or luau, at the home of Princess Kawanakoa is scheduled for tomorrow evening.

No word has been received directly from Secretary Knox, but it is thought his trip to Hilo will depend on favorable reports of the volcano's activity. If such favorable reports are received, the Hilo trip likely will be taken, and Secretary Fisher, his wife and Mr. Meyer, his private secretary, will accompany the Maryland to that island, as the big vessel is not likely to return to Honolulu before sailing for the mainland.

lot for the purpose of obtaining funds with which to purchase other public property for the town of Hilo—for other purposes, that being the only practical way in which it could pay for the property. Shortly after that, I believe, Davies & Company applied for three of the four lots in which the Armory Site was to be subdivided, and offered, I think, \$8500 for them, and agreed to erect a concrete building on the lots to cost at least \$20,000. The matter was then referred to the Land Board, which unanimously approved the proposition. The lots were then appraised, and the appraisers fixed the value at \$18,750. This was again referred to the Land Board and the Land Board approved of the appraisal and decided that the lots should be sold singly and not as a whole. They were then advertised to be sold on April 15, 1911, I think it was. The sale was postponed to May 15, 1911. Davies & Company then applied again to have the lots put together, and stated that they would have to withdraw their application if the lots were put up singly. The request was refused. Davies & Company then requested the Superintendent of Public Works to allow them to construct a spur track from the railroad track up along side of these lots in case they purchased them. The request was refused, being in the nature of a petition for the Superintendent of Public Works could not grant. Then Davies & Company, as I understand it, got a petition signed by property owners in that neighborhood, and went to the Superintendent of Public Works requesting that a permit be granted the Railroad Co. to build a spur track up that way. The railroad Co. not having cared enough about it to have applied for this previously. The railroad company then put in its formal application for building a spur track, and that was granted, along with what was a street on the map, but was not a street in use, and which would have to be filled in a good deal in case the Railroad should construct a spur track on it. But nothing was done.

Fisher: Do you want to ask anything, Mr. Ashford?

Ashford: I assume you have read what the delegate had to say on pages 33 and 44 upon that topic, or rather those two topics?

Governor: Yes, I have read them. Ashford: Well, now, beginning with the paragraph "It is significant" on page 43, thence to the end of the paragraph on page 44, will you state whether or not that fairly described the apparent condition of public sentiment in Hilo at the time, namely in November of last year, and that there was at that time a wide public sentiment there in opposition to the proposed deal, both with regard to the wharf and in regard to the laying of a spur line, and the proposed removal of the Armory.

Governor: Yes, at that time there was a feeling in regard to the wharf site; the feeling in regard to the armory site did not come up until long afterward, not until after the lots had been advertised for sale.

Ashford: I am referring to November, 1911.

Fisher: Was there a public feeling against those two proposals?

Governor: There was not so much in regard to the removal of the armory. There was, however, more or less feeling there. Public sentiment of Hilo favors the removal of the armory now, and I think it did in November.

Fisher: You think that there had been some feeling against it, but that feeling has largely disappeared now?

Ashford: Then you think there was some feeling in that regard?

Governor: Yes, there was.

Railroad Monopoly?

Ashford: Do you consider that statement over drawn on page 44? (Quotes from Charges). Do you think a preferential right, in the then proposed agreement, was given to the Hilo Railroad Company against others; that others could have no rights to the use of the wharf except when the railroad company did not require it, or when it did not interfere with the business of the railroad company.

Governor: Well I think the railroad was asking too much. I was not aware that they were asking for a monopoly. In fact I never read the application of the Railroad Company, of the agreement finally adopted by the Railroad Company and the Territory.

Ashford: Was it not a fact that Mr. Campbell was understood to express himself strongly in regard to giving the Railroad Company a monopoly of the wharf?

Governor: Some understood that; and some did not. I don't know how many thought that.

Fisher: What is the point—that

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THE CLARION

there was justification for this paragraph in the Delegate's Charges? I think the Governor has said enough to show that this was true. Assuming that the Governor did not have time to go into it, and the Delegate merely put in a complaint as to the then existing public opinion, whether the opinion was right or wrong, perhaps there was justification in incorporating that paragraph in the complaint? Governor: I think so.

Fisher: As I understand, many of these charges in the complaint were inserted simply because of the fact that the matters were called to your attention, and that of the Delegate by interested parties, that you thought ought to be investigated; isn't that so, Mr. Ashford?

Ashford: Yes, that is true in regard to a great many of them.

Governor: Now in regard to the railroad matters, I think one further thing might be said in regard to the Waialua water case. Very little need be said as to the exchange which was mentioned in regard to this, excepting this, that the application came from the County Board of Supervisors and not from the plantation; and the matter was gone into carefully. Three disinterested appraisers were appointed and made a very complete appraisal, a statement of their findings, and the reason which led them to make the appraisal as they did. They found that only about one acre of the land was entitled to water rights. That was expressly stated in their appraisal at that time. The land conveyed by the Territory consisted of three different tracts aggregating a little over forty acres. These tracts were irregular in shape and intermingled with private titles—within those tracts there were small private tracts, and not enough land to accommodate those who wanted the lands.

Fisher: I don't think that you need to go into that any further.

Governor: Then there were the lands of Hukilauopihau, in Hawaii. There I think the only question raised was that the Land Commissioner did not reply to the applicants. The facts were these. The application was made on February 24, 1911. Its receipt was acknowledged February 27, 1911. The Land Commissioner then wrote to the plantation and ascertained when the cane would be harvested, on July 6, 1911, and not receiving a reply, wrote again on August 1, 1911. He received their reply, dated August 4, 1911, showing in detail that most of the cane would not be harvested in 1912—this year. The Land Commissioners then made a memorandum in pencil to the effect that the land should be surveyed for homesteads and opened up successively as the cane came off. At the same time, on August 14, 1911, he wrote to the plantation that the land would be withdrawn for homestead purposes.

Fisher: That was ten days after the date of their letter?

Governor: Yes. So far as the records show he did not then reply to the applicants and whether he made any oral reply or not I do not know—a reply.

Lack of Information.

Fisher: I have found a good many instances of that kind as we have traversed about on the different islands. A good many people interested in homesteading, or prospective homesteaders, have complained of "this same thing, and it has caused a good deal of criticism. Do you think they have usually gotten the information they asked for?"

Governor: I think as a rule they have. I think that in a few cases, possibly three or four, it has for some reason been overlooked.

Fisher: It seems to me there are a good many more than two, three or four cases, as I remember it.

Governor: I don't think there are

many more. Fisher: Take for instance people who want to buy residence lots. They have not always been given information as to whether the land was to be split up for residence lots or not.

[Owing to limitations of space, the Star-Bulletin cannot present all Governor Frear's statement today. will be continued tomorrow.]

PRICE OF MILK GOES UP TODAY

Beginning today the Honolulu Dairymen's Association, handling the product of several of the largest and highest class dairies, raises the price of milk to twelve cents from eleven.

Besides the raise in price, there is a scarcity of the lactical fluid, owing to the severe drought. This morning the association was short of 700 quarts of the demand, and it was unable to fill an order for seventy quarts to supply the stores of the steamer Kilauea, for her voyage to San Francisco.

An advertiser wants to trade a diamond for Kaimuki property.

WANTS

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IN THE CIRCUIT COURT, FIRST CIRCUIT, Territory of Hawaii.—In Probate. At Chambers, No. 4414. In the Matter of the Estate of Marie Stuenkel, Deceased. On reading and filing